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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,023	05/30/2001	Charles L. Branch	4002-2533	9301

52196 7590 04/26/2006

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INDIANAPOLIS, IN 46204-2709

EXAMINER
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PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/870,023	BRANCH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pedro Philogene	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 63-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 63-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/20/06 3/24/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 1/20/06 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 63-106 are rejected under 35 U.S.C. 102(e) as being anticipated by Paul et al. (6,258,125).

With respect to claim 63, Paul et al disclose a spinal fusion implant comprising an elongate bone portion defining a longitudinal axis, and having a generally rectangular cross-section transverse to the longitudinal axis; as best seen in FIG.9, the bone portion

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comprising a first bone engaging surface (14), a second bone engaging surface (16); and a first side wall extending between the first and second bone engaging surfaces, wherein the first side wall comprises a concave surface; as best seen figure 9 and as set forth in column 5, lines 8-23.

With respect to claims 64-81,89-94, Paul et al disclose all the limitations, the shape of the sidewalls, ridges or teeth (12) on the engaging surface, an end wall having a recess or a threaded bore, or a groove (20), adapted to engage an implant holder.

With respect to claim 82, Paul et al disclose a spinal fusion implant comprising an elongate bone portion defining a longitudinal axis, as best seen in FIG.9, and comprising, a first side wall comprising a concave surface, a second side wall comprising a convex surface generally parallel to the concave surface; as best seen in Fig.9, a first bone engaging surface positioned between the first and second side walls, and a second bone engaging surface opposite the first bone engaging surface; as best seen in Fig. 9, wherein at least one of the first or second bone engaging surfaces comprises ridges or teeth; as set forth in column 5, lines 8-23.

With respect to claim 83, Paul et al disclose all the limitations, as best seen in FIG.9.

With respect to claim 84, Paul et al disclose a system for spinal fusion of adjacent vertebrae, the system comprising a pair of spinal implants; as best seen in FIG.9, the spinal implants comprising an elongate bone portion defining a longitudinal axis and having a generally rectangular cross section transverse to the longitudinal axis; a first bone engaging surface, a second opposite bone engaging surface, and a first

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side wall extending between the first and second bone engaging surfaces, the first side wall comprising a concave portion (FIG.9) the pair of implants are positioned in an intervertebral space whereby the concave portions define a chamber; as best seen in FIG.9.

With respect to claims 85-88, Paul et al disclose all the limitations; as best seen in FIG. 9, and as set forth in column 5, lines 8-23.

With respect to claim 95, Paul et al disclose an implant (70,70') for implantation in a disc space between adjacent vertebrae, the implant formed of bone and comprising: a first end having a tool engagement recess and an opposite second end a first bone engaging surface and an opposite second bone engaging surface (FIG.9) a first side wall disposed between the first end and the second end and extending from the first bone engaging surface to the second bone engaging surface; a second side wall opposite the first side wall, wherein the implant has a generally rectangular cross section; as set forth in column 5, lines 8-23 and as best seen in FIG.9.

With respect to claims 96-106, Paul et al disclose all the limitations; as best seen in FIG. 9, and as set forth in column 5, lines 8-23.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,371,988

4-2002

Pafford et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

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4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
April 24, 2006

  
PEDRO PHILOGENE  
PRIMARY EXAMINER